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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,972	12/28/2000	Pramod K. Srivastava	8449-134	7769

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NEW YORK, NY 100362711

EXAMINER

YAEN, CHRISTOPHER H

ART UNIT	PAPER NUMBER
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1642

DATE MAILED: 08/28/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/750,972

Applicant(s)

SRIVASTAVA, PRAMOD K.

Examiner

Christopher H Yaen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 75,97,99-101,111,112,122,129 and 132-147 is/are pending in the application.
- 4a) Of the above claim(s) 133-147 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 75,97,99-101,111,112,122,129 and 132 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 22.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The amendment filed 6/4/2003 (paper no. 21) is acknowledged and entered into the record. Accordingly, claims 104-110, 121, and 130-131 are canceled without prejudice or disclaimer, and claims 133-147 are newly added.

2. Claims 75,97,99-101,111-112, 122, 129, and 132-147 are pending, claims 133-147 are withdrawn from further consideration as being drawn to a non-elected subject matter. Newly submitted claims 133-147 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Applicant had elected in paper no. 13 to prosecute on the merits the invention of group III drawn to a method of modulating an immune response (claims 27-38, of which are now canceled) and a method of treating an autoimmune disease (amended claim 74, see paper no. 17). Newly added claims 133-147 are drawn to a method of inhibiting re-presentation of an antigenic peptide, which is patentably distinct from the invention already examined.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 133-147 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Applicant is reminded to cancel all claims drawn to non-elected inventions.

3. Therefore, claims 75,97,99-101,111-112, 122, 129, and 132 are examined on the record.

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Information Disclosure Statement

4. The Information Disclosure Statement filed 6/4/2003 (paper no. 22) is acknowledged and considered. A signed copy of the IDS is attached hereto.

NEW ARGUMENTS

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 75,97,99-101,111,112,122,129, and 132 are rejected under 35 U.S.C. 102(e) as being anticipated by Strickland *et al* (US Patent 6,156,311). Claims are drawn to a method of treating an autoimmune disorder comprising the administration of an anti-CD91 antibody in an amount to treat the autoimmune disorder (claim 75); wherein the antibody interferes with the interaction of α 2 Macroglobulin receptor (α 2MR) binding with a heat shock protein (claim 97), wherein the heat shock protein is gp96 (claim 99), HSP70 (claim 100), and HSP90 (claim 101); wherein the antibody interferes with the interaction of α 2MR with α 2M (claim 111); wherein the diseases is selected from a group of autoimmune diseases among which dense deposit disease is included (claim 112); wherein the anti-CD91 antibody is an antagonist to

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α 2MR (claim 122); wherein the mammal is a human (claim 129); and wherein the antibody is purified (claim 132).

Strickland *et al* disclose a method of using a LRP antibody for the treatment of Alzheimer's disease (see abstract). Strickland *et al* further characterizes the anti-LRP antibody as one which is able to interfere with ligand binding (column 3, line 57-60), of human form (column 4, line 15-16; column 14, lines 51-53), and are purified antibodies (column 9, lines 14-21). The specification teaches that CD91 or α 2MR is also known as LRP (see page 3, line 22) and characterizes autoimmune diseases as diseases of which include dense deposit diseases (see claim 112 and page 70 line 1). Because the specification has not defined "dense deposit disease" and because Alzheimer's disease is characterized as a disease involving the deposit of extracellular plaques (as evidenced by Weiner *et al* (Nature Dec 2002;420:879-884)), the claims are also anticipated by Strickland *et al*. As further evidenced by, Weiner *et al* states Alzheimer's disease is now implicated as having "inflammatory an immune components and amenable to treatment by anti-inflammatories and immunotherapeutic approaches" (see abstract). Although not specifically characterizes as being able to block the interaction of HSP binding to α 2MR, inherently, the method taught by Strickland *et al* would also block HSP binding to α 2MR, because the mechanism of action taught by Strickland *et al* involves the blocking of a receptor-ligand interaction, which is the same as that of the instant invention. Therefore, in the absence of evidence to the contrary, the antibody used by Strickland *et al* would also interfere with or block α 2MR interaction with HSPs (i.e. gp96, HSP70, and HSP90), thereby treating autoimmune disorders.

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Conclusion


No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher H Yaen whose telephone number is 703-305-3586. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa can be reached on 703-308-3995. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Christopher Yaen
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August 18, 2003


ANTHONY C. CAPUTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600